IN THE SUPREME COURT OF THE STATE OF NEVADA

J. STEWART WHITE AND PATRICIA B. WHITE; AND THE STONEHOUSE, LLC,
Appellants,
vs.
CLK DESIGNS, INC., A PROFESSIONAL CORPORATION; CYNTHIA KENNEDY AND STAN KENNEDY,
Respondents.

No. 47764

FILED

FEB 15 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a negligence action. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. In this case, appellants seek to challenge an interlocutory order granting summary judgment on the issue of indemnification in the context of the final judgment.[1]

Facts

Appellants J. Stewart and Patricia B. White (the Whites) own two houses on adjacent lots, the "Stone House" and the "White House."[2]

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[1]See Consolidated Generator v. Cummins Engine, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) ("interlocutory orders entered prior to the final judgment may properly be heard by this court" if the appeal if from a final judgment). On June 26, 2006, the district court entered an order, pursuant to the parties' stipulation, dismissing the underlying case, Swainston's complaint against the Whites. Nothing in the record indicates what damages appellants paid to Swainston as a settlement.

[2]As this is how the parties referred to the houses in their briefs, we adopt the same language for ease of identification. We note that while the

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Respondents Cynthia and Stan Kennedy began negotiations with the Whites for Cynthia's business, respondent CLK Designs, Inc. (CLK) to rent the Stone House, with an option to later rent the White House. Mr. White, an attorney, drafted a lease agreement (the White lease) which specified that "[b]oilerplate provisions are included by reference to title only," with intent to complete the full provisions at a later date. The White lease referenced an indemnification clause by title only, and was only executed by Mr. White. Mrs. Kennedy obtained a form lease (CLK lease) which contained an indemnification clause, but which was not executed by any party. The parties never executed any final lease agreement. However, CLK began paying renting on the Stone House by the end of July 2002. Although CLK was paying rent on the Stone House only, the Whites gave CLK a key and permission to use the White House for storage purposes. Presumably, unbeknownst to the Whites, CLK allowed its employees to use the bathroom in the White House because it was renovating the Stone House bathrooms. On September 18, 2002, Rae Swainston, a CLK employee, tripped and fell on the steps leading into the White House while entering to use the bathroom. Swainston filed a negligence action against the Whites, and the Whites filed a third-party complaint for indemnification against the Kennedy's and CLK.

. . . continued

Whites own the houses, the disputed lease named appellant The Stonehouse, LLC as lessor and CLK as lessee. The Whites are the only members of The Stonehouse, LLC, with Mr. White acting as managing partner.

The Kennedy's and CLK moved for summary judgment, arguing that the parties had no valid, enforceable lease agreement or express indemnification agreement. They further argued that they had no independent duty to indemnify. The district court, without discussion, granted summary judgment in favor of the Kennedy's and CLK on the grounds that there was no valid and enforceable indemnity agreement.[3] This appeal followed. Although the district court failed to articulate its rationale, specifically as to the issue of an independent duty, we conclude that no issue of material fact exists which could give rise, as a matter of law, to any legal duty on the part of CLK to indemnify the Whites. Therefore, we affirm the decision of the district court.

Standard of Review

This court reviews the order granting summary judgment de novo.[4] Summary judgment is appropriate if the pleadings and other evidence on file, viewed in a light most favorable to appellant, demonstrate that no genuine issue of material fact remains in dispute and that respondent is entitled to judgment as a matter of law.[5]

Discussion

On appeal, the Whites argue that they are entitled to indemnity for two reasons. First, the Whites argue that a valid enforceable indemnification clause provides a basis for indemnity. Next,

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[3]The Whites moved for partial summary judgment against the Kennedy's and CLK, which the district court denied.

[4]Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

[5]Id. at 731, 121 P.3d at 1031.

the Whites argue that the Kennedys and CLK, as commercial lessees, owed them a duty to indemnify based on an independent duty arising from the lessor/lessee relationship. We disagree.

At the outset, we reject the White's argument that an express indemnity clause imposes the duty of indemnity on CLK. Here, there is no written contract that specifically sets out the duty to indemnity. Therefore, the district court correctly found no express indemnification clause.

Next, the Whites argue that their commercial lessor/lessee relationship with CLK imposes upon CLK an independent duty, which in turn triggers a duty to indemnify them. The Whites argue that the district court erred by failing to recognize an independent duty. We disagree.

This court has held that "'[a]bsent an independent duty owed to a third party, employers . . . are insulated by the provisions of the Nevada Industrial Insurance Act [NIIS] . . . , not only from liability to employees, but also from liability by way of indemnity to a third-party.'" [6] However, we note that an "independent duty" is the exception, not the rule.[7] Therefore, this court has rejected finding, creating, and imposing implied indemnity contracts in lessor/lessee relationships.[8] Thus absent

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[6]American Federal Savings v. Washoe County, 106 Nev. 869, 873, 802 P.2d 1270, 1273 (1990) (citing Kellen v. District Court, 98 Nev. 133, 134, 642 P.2d 600, 600-601 (1982).

[7]American Federal, 106 Nev. at 873, 802 P.2d at 1273.

some express indemnification agreement, the lessor/lessee relationship will not support an independent duty to indemnify.

While Whites seem to suggest that any general duty of care or agreement on CLK's part to repair the steps would trigger an independent duty to indemnify the Whites, we find such logic faulty. This court has rejected the premise that the employer having a duty of care to third-parties does not give rise to an independent duty to indemnify.[9] Further, such a general duty and resulting liability would be of the employer to the employee, which is precisely the liability CLK is insulated from by NIIS.[10] Therefore, any duty and associated liability CLK may have had to repair the steps, derived from either a general duty of care or agreement with the Whites, would have been owed to Swainston, not to Whites. Further, because this court has rejected implied indemnification, even an agreement to maintain, without more, will not trigger indemnification.

. . . continued

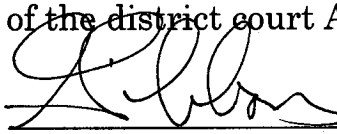
[8]American Federal Savings v. Washoe County, 106 Nev. 869, 873 & 876, 802 P.2d 1270, 1273 & 1275 (1990) (citing Outboard Marine Corp. v. Schupbach, 93 Nev. 158, 164-65, 561 P.2d 450, 454).

[9]See Kellen v. District Court, 98 Nev. 133, 134-35, 642 P.2d 600, 601 (1982).

[10]See id.

Thus, we conclude that no genuine issue of material fact remains and that, as a matter of law, CLK had no duty to indemnify the Whites. Accordingly we

ORDER the judgment of the district court AFFIRMED.



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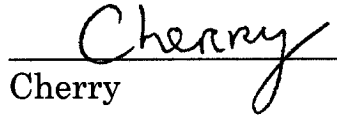

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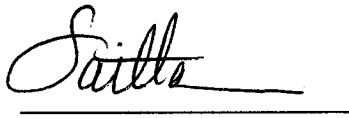

_____, J.
Saitta

cc: Hon. Brent T. Adams, District Judge
Lester H. Berkson, Settlement Judge
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno
Bennion Clayson & Marias
Washoe District Court Clerk